

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
RAYMOND LIDDY,
Defendant.

Case No.: 17cr2475-CAB

**ORDER ON MOTION TO
SUPPRESS [Doc. No. 84]**

Defendant Raymond Liddy is charged with a violation of Section 2252(a)(4)(B) of Title 18 of the United States Code. [Doc. No. 13.] Before the Court is the defendant's motion to suppress statements he made to law enforcement. [Doc. No. 84.] The government filed a response in opposition. [Doc. No. 98]. Defendant filed a reply. [Doc. No. 105.] The Court heard argument on May 2, 2019. [Doc. No. 106.] The parties were granted leave to submit additional exhibits for the Court's consideration. [Doc. Nos. 107, 108.] Having considered the briefs, the arguments of counsel and the additional materials, the motion to suppress is DENIED.

I. Factual Background

On the morning of July 25, 2017, at 7:00 a.m., three officers (FBI Special Agents Daniel Evans and Nathaniel Dingle, and SDPD Detective Susan Righthouse), arrived at

1 Raymond Liddy's home.¹ The officers were wearing tactical vests and had visible
2 holstered firearms. They rang the bell. Liddy was awake and came to the door wearing
3 shorts and a t-shirt. Agent Evans inquired if the defendant was Raymond Liddy. The
4 agent then identified himself and his colleagues and asked if Liddy "had a minute to
5 speak with them." When Liddy inquired what about, Agent Evans asked if they could
6 speak inside. Liddy allowed the officers to enter his home and informed the officers his
7 wife was asleep upstairs, so Agent Evans said they would "keep it down." After
8 inquiring if there were any children in the home, Agent Evans informed Liddy they were
9 following up on information regarding computer usage and concerns about emails. Liddy
10 then asked to move the conversation to the "back of the house" and the three officers
11 accompanied Liddy to the kitchen to talk.

12 As they sat in the kitchen, Agent Evans explained that they were investigating an
13 email account that came back to the defendant's house with an account identifier
14 "cahubby." Agent Evans indicated they were following up on concerns about
15 questionable photos. Agent Evans and Liddy discussed Liddy's computer usage, an adult
16 website and photos on the website. The discussion continued about pictures on the site
17 and how Liddy may have received them, whether his chat site conversations involved
18 children, and any other computer accounts he may have.

19 Agent Evans did not directly accuse Liddy of anything but inquired if Liddy may
20 have accidentally received or sent pictures involving children. Agent Evans asked if Liddy
21 had saved any pictures of children. He also inquired about the type of computer Liddy
22 owns and whether Liddy ever had chats about children. Agent Evans asked again about
23 whether Liddy had other accounts or screen names, and whether Liddy alone used the
24 "cahubby" screen name.

25
26
27 ¹ The Court finds the facts as set forth from a review of the audio recordings made on July 25, 2017, the
28 reports filed with the motions, the defendant's declaration, and the post-hearing lodgments submitted by counsel.

1 After approximately 25 minutes, Agent Evans went on to explain that certain
2 service providers had reported email exchanges on accounts associated with Liddy and
3 they needed to “get to the bottom of it.” He expressed concern about a pattern of
4 behavior that was troubling and pressed Liddy to explain the nature of his interest
5 regarding child pornography. Agent Evans and Liddy then discussed whether a forensic
6 examination of Liddy’s computer would uncover stored or deleted pictures involving
7 children or requests for such images.

8 No threats were ever issued, no promises were made, no weapons were unholstered
9 or brandished or force even implied. Agent Evans never raised his voice, the tone and
10 tempo of the interrogation was polite, calm, hushed and conversational. Excepting one
11 question from Detective Righthouse about cloud storage, she and Agent Dingle did not
12 participate in the conversation.

13 Approximately 35 minutes after the officers arrived, following the above
14 exchange, Agent Evans explained that he had a warrant to search the entire house and
15 additional agents would arrive shortly to conduct the search. The interrogation
16 essentially ended at this point before the search team arrived. Agent Evans told Liddy he
17 was not under arrest, he was free to leave, although Liddy would not be permitted to
18 change clothes until the house was “cleared.”

19 Agent Evans suggested Liddy wake his wife so she would not be alarmed by the
20 arrival of the search team. Upon learning, however, that Liddy had firearms in the master
21 bedroom, Agent Evans required for the safety of all concerned that Detective Righthouse
22 accompany Liddy into the room and remain with Mrs. Liddy while she dressed. Liddy
23 and Agent Evans returned downstairs and Agent Evans asked Liddy where he would like
24 to sit to stay out of the way. Liddy got his coffee and returned to the kitchen. At
25 approximately 7:47 a.m., as the search team was entering, Agent Evans provided Liddy
26 with a copy of the warrant and again told him he did not have to stay during the search.

27 Liddy elected to stay during the search. Although Liddy was always in the
28 company of an officer while he remained in the house, no further questions were directed

1 to him regarding his computer usage or habits. Liddy made some unsolicited comments
2 about his computer habits, but Agent Evan's interrogation had discontinued. Further
3 interactions between the officers and Liddy were primarily related to the conducting of
4 the search of the premises. Subsequent conversations focused on the logistics of securing
5 Liddy's firearms, confirming if there was any attorney-client privileged information on
6 Liddy's computer or phone to safeguard those communications, and whether Liddy
7 would voluntarily come to the FBI office to submit to a polygraph concerning whether he
8 had any inappropriate contact with children.² Liddy was told he did not have to stay but
9 continued to elect to do so and arranged to take a sick day from work. An officer made
10 the electronic communication to Liddy's office on his behalf rather than give Liddy
11 access to his phone, to preserve the phone for later search.

12 Shortly after 9:00 a.m., Agent Evans informed Liddy that child pornography
13 images had been located on a thumb drive and although it was still not his intention to
14 place Liddy under arrest at that time, he gave *Miranda* warnings to Liddy, who
15 acknowledged he understood all his rights. Although the agent downplayed the
16 seriousness of the situation, Liddy's rights were clearly presented. Discussion then
17 continued about Liddy driving himself to the FBI office to participate in a voluntary
18 polygraph. While those arrangements were being finalized, Agent Evans was informed
19 that the U.S. Attorney's Office had instructed he take Liddy into custody. At
20 approximately 10:15 a.m., Liddy was told he was being arrested and was handcuffed and
21 transported to the FBI office in San Diego.

22 Liddy moves to suppress all the statements he made on July 25, 2017, arguing that
23 from the time the officers entered his home he was subject to a custodial interrogation
24 and he should have been informed of his rights before any questions were asked. Liddy
25

26
27 ² Further reflecting the cooperative atmosphere, Liddy also engaged with the officers during the
28 execution of the search, in conversation about his new kitten, the nature of his job at the Attorney
General's Office, and his military service.

1 further argues that the *Miranda* advisements he received after the interrogation were
2 ineffective as Agent Evans engaged in a deliberate “two-step interrogation procedure”
3 intended to elicit inculpatory statements before the defendant was advised of his rights
4 and the subsequent advisal did not correct the situation.

5 The question before the Court is whether Liddy was “in custody” for purposes of
6 *Miranda* at the time he was interviewed by law enforcement agents in his home.

7 II. Legal Standard

8 In *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), the Supreme Court adopted
9 procedural safeguards to guarantee that suspects are advised of certain rights before a
10 “custodial interrogation.” In “*Miranda* case law, ‘custody’ is a term of art that specifies
11 circumstances that are thought generally to present a serious danger of coercion.”
12 *Howes v. Fields*, 565 U.S. 499, 508-09 (2012). “The initial step is to ascertain whether,
13 in light of ‘the objective circumstances of the interrogation’ a ‘reasonable person [would]
14 have felt he or she was not at liberty to terminate the interrogation and leave.’” *Id.*, at
15 509 (citations omitted).

16 In *United States v. Craighead*, 539 F.3d 1073 (9th Cir. 2008), the court specifically
17 addressed the circumstance of interrogation by law enforcement officers in the suspect’s
18 home and when such questioning becomes custodial in nature and requires *Miranda*
19 warnings. The court first stated that in-home interrogation is not *per se* custodial and that
20 in general courts have been much less likely to find an interrogation in the suspect’s
21 home was custodial in nature. *Id.*, at 1083. “The element of compulsion that concerned
22 the Court in *Miranda* is less likely to be present where the suspect is in familiar
23 surroundings.” *Id.*

24 The court nevertheless determined that an interrogation in the suspect’s home may
25 be found to be custodial under certain circumstances and considered the extent to which
26 the circumstances of the interrogation turned the otherwise comfortable and familiar
27 surroundings of the home into a “police-dominated atmosphere.” *Id.* To guide the
28 determination of whether an in-home interrogation was custodial, a “necessarily fact

1 intensive” inquiry, the court enunciated several factors, that although “not to be
2 interpreted as an exhaustive pronouncement,” are relevant to whether the circumstances
3 of an interrogation created a police-dominated atmosphere. *Id.* at 1084.

4 The *Craighead* factors are (1) the number of law enforcement personnel and
5 whether they were armed; (2) whether the suspect was at any point restrained either by
6 physical force or threats; (3) whether the suspect was isolated from others; and (4)
7 whether the suspect was informed that he was free to leave or terminate the interview,
8 and the context in which any such statements were made. *Id.*

9 III. Discussion

10 The totality of the circumstances in this case are distinguishable from those in
11 *Craighead* and do not support the conclusion that law enforcement had created such a
12 police-dominated atmosphere in Liddy’s home that Liddy was “in custody” at the time of
13 Agent Evan’s interrogation therefore requiring Miranda warnings before the questioning
14 took place.

15 In *Craighead*, eight law enforcement officers from the FBI, a sheriff’s department
16 and Air Force Special Investigations, accompanied by the defendant’s Air Force superior,
17 entered Craighead’s house on a military base pursuant to a search warrant. *Id.*, at 1078.
18 The officers were armed, and some unholstered their firearms in the defendant’s
19 presence. *Id.*, at 1085. The defendant was escorted into an unfurnished storage room
20 with a single door. The door was closed and the defendant was questioned by an FBI
21 agent while an armed detective stood with his back against the door and six more officers
22 were searching the house. *Id.*, at 1086, 1089. The Air Force Sergeant who was
23 specifically there to provide “emotional support” for the defendant was excluded from the
24 room where the interrogation took place. *Id.*, at 1087. Although the defendant was told
25 by the FBI agent his statements were voluntary and he could leave, the court found the
26 totality of the circumstances were such that the defendant reasonably could have believed
27 he was not free to leave or decline to be interviewed. Craighead’s home had become a
28 police-dominated atmosphere such that a reasonable person would have felt he was in

1 custody and was not at liberty to terminate the interrogation and leave. As such the court
2 concluded *Miranda* warnings should have been administered before he was questioned.

3 The circumstances of this case are quite different. Although a large search team
4 eventually arrived at defendant Liddy's home that morning, unlike Craighead, Liddy was
5 not initially confronted with a swarm of officers entering his home without his
6 permission and dominating the environment. Liddy answered his door bell to find three
7 officers who asked if he would speak with them. Liddy invited them into his home and
8 he directed the officers to his kitchen. During the 35 minutes that followed, Liddy
9 answered Agent Evans' questions regarding his computer usage, habits and activities.
10 There was no other police presence and Liddy was not aware that a warrant had issued
11 and a search was imminent.

12 The three officers were armed, however, no weapons were drawn and Liddy was
13 never restrained by physical force or intimidation during the questioning. Liddy was not
14 isolated from others. He requested the officers not disturb his wife and moved the
15 conversation to the kitchen to avoid waking her. Although he was not specifically told he
16 could terminate the interview, he also was never told, nor was it ever implied, that he
17 would be subject to arrest if he asked to continue the interview to another date or
18 terminate it entirely.

19 The setting does not become custodial requiring the administration of *Miranda*
20 warnings simply because Agent Evans suspected Liddy of criminal activity. Although
21 "any interview of one suspected of a crime by a police officer will have coercive aspects
22 to it, simply by virtue of the fact that the police officer is part of a law enforcement
23 system which may ultimately cause the suspect to be charged with a crime," that alone is
24 insufficient to render the questioning custodial. *Oregon v. Mathiason*, 429 U.S. 492, 495
25 (1977). Liddy was never threatened with criminal charges or arrest if he did not
26 cooperate. At the time of the interrogation, his home had not become police-dominated
27 atmosphere such that a reasonable person would have considered himself in custody,
28

1 unable to terminate the interview or ask the officers to leave. *Miranda* warnings were not
2 required.

3 Defendant focuses on the atmosphere in Liddy's home during the search following
4 Agent Evans' interrogation. To be sure, for safety and the preservation of evidence,
5 Liddy was not allowed to move unescorted around his home during the execution of the
6 search. However, the control law enforcement exercised once the search began, is not a
7 factor in the analysis of the atmosphere when the interrogation took place. From 7:00
8 a.m., when Liddy allowed the three officers into his home to the conclusion of the
9 interview at approximately 7:35 a.m., the atmosphere was not one of police dominance
10 and coercion. The record does not support defendant's assertion that comprehensive
11 questioning of Liddy continued for over two hours. To the contrary, even before the
12 search began, interrogation of Liddy ceased. Discussion between Liddy and officers once
13 the search ensued was confined to the search-related procedures regarding his firearms
14 and attorney-client files, and whether he would voluntarily submit to a polygraph at the
15 FBI office,³ as well as small talk about Liddy's kitten, job and military service.

16 Liddy was not in custody during his interrogation, therefore no *Miranda* warnings
17 were required. Defendant's motion to suppress his pre- and post- *Miranda* statements is
18 **DENIED.**

19 Dated: May 14, 2019



Hon. Cathy Ann Bencivengo
United States District Judge

27
28 ³ The fact the Liddy was arranging to drive himself to the FBI office undercuts his current declaration
that he felt he was in custody, unable to leave the premises without being subject to arrest.